IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 253 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

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TRIBHOVANDAS NARANDAS PATEL - Applicant(s)
Versus
STATE OF GUJAART THRO' & 1 - Respondent(s)

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Appearance :
MR DM AHUJA for Applicant(s) : 1,
MR DIPEN DESAI ADDL PUBLIC PROSECUTOR for Respondent(s) : 1,
MR HARDIK C RAWAL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 24/07/2007

ORAL JUDGMENT :

1. By the present revision application under section 397 of the Criminal Procedure Code, 1973 ("the Code" for short), the petitioner, who is

stated to be aged 75 years and convicted for the offence under section 138 of the Negotiable Instruments Act, 1881 ("NI Act" for short) vide order dated 30.3.2007, has called into question the condition imposed when his application for bail pending appeal was considered and granted vide order dated 30.4.2007. The impugned condition in the aforesaid order is to the effect that the petitioner was to be released on bail on depositing Rs.2 lakh and on executing bond for Rs.10,000/- and furnishing surety for the same amount before the trial court, with several other conditions. As observed in the impugned order, it was expressly stated by learned counsel Mr.D.M.Ahuja, appearing on behalf of the petitioner before the appellate court, that the petitioner would abide by the conditions which may be imposed by the court and would also furnish surety as per the order that may be passed by the court. It appears from the order of the trial court by which the petitioner was convicted that the cheque in the sum of around Rs.45 lakh, admittedly signed by the petitioner, was returned and, after appreciating the evidence on record, the petitioner had come to be convicted for the offence under section 138 of the NI Act and sentenced to undergo simple imprisonment for one year and pay fine of Rs.10,000/-, in case of default in payment of

which he was to undergo imprisonment for 30 more days.

2. It was submitted by learned counsel Mr.Ahuja that the petitioner had reached ripe old age of 75 years, that his sons had deserted him, that most of his family members had gone abroad, that the petitioner had valuable properties in his own name and he could furnish surety for sufficient amount so as to ensure his presence at the time of hearing of the appeal and for serving sentence, if his appeal were dismissed. Learned counsel Mr.Ahuja relied upon judgments of the Supreme Court in H***ussainara Khatoon v. Home Secretary, State of Bihar, Patna [AIR 1979 SC 1360],*** in B***hagwan Rama Shinde Gosai v. State of Gujarat [(1999) 4 SCC 421]***, in ***Sheikh Ayub v. State of M.P. [(2004) 13 SCC 457]*** and in ***Sandeep Jain v. National Capital Territory of Delhi [AIR 2000 SC 714]*** and submitted that the condition of paying Rs.2 lakh in cash was too harsh and amounted to denial of bail as the petitioner could not afford to raise that sum and deposit in the court.

3. Learned counsel Mr.Rawal, appearing for the respondent-original complainant, submitted that, even as original Criminal Case No.5459 of

2003 was filed and conducted on the basis of private complaint of the respondent and the respondent, original complainant, was joined as necessary party and opponent in the appeal filed by the petitioner, the application for bail pending appeal only showed "State of Gujarat" as the Opponent and thus the impugned order was obtained without joining the necessary party and keeping the complainant in dark. Secondly, the appellate court appears to have imposed the impugned condition on the basis of the statement made on behalf of the petitioner and the facts and circumstances of the case, particularly the status of the petitioner and the amount involved in the criminal case. He submitted, on that basis, that it being discretionary order granting relief subject to reasonable condition, the present revision application was not required to be entertained. It was also pointed out from the record of present proceeding that, even as Rule was issued on 11.5.2007 making it returnable on 15.6.2007, learned counsel Mr.Ahuja for the petitioner had sought extension of time for depositing the sum of Rs.2 lakh and, at his request, time was extended till 15.6.2007. Thereafter, successively, extension was sought for depositing the amount and thus the benefit of the impugned order was taken without complying

with the condition even as that condition was in fact never stayed by this court.

4. Considering the main argument of learned counsel Mr.Ahuja that the petitioner was not in a position to deposit the required sum, it was seen and conceded that there was not a single factual averment on oath in the petition which could lead to the inference that the petitioner was in a poor financial condition. Secondly, the appellate court appears to have applied its mind to the facts and circumstances of the case, including likelihood of the appeal remaining pending for a longer time, and appears to have made the discretionary order on the basis of the conditions invited or the concessions made by the petitioner himself. In the above facts, no illegality, much less a miscarriage of justice, appears to have occurred in the proceedings before the appellate court in which the petitioner's application is actually allowed. Therefore, this court may not be justified in interfering with the impugned order or the condition. It was, however, jointly submitted by learned counsel on both sides that the appeal was required to be directed to be expeditiously heard in the interest of justice. Therefore, the present application is dismissed with the

observation that Criminal Appeal No.31 of 2007 may be heard and disposed as expeditiously as practicable and preferably within a period of three months. In the meantime, the petitioner would be at liberty to comply with the aforesaid impugned condition of depositing Rs.2 lakh on or before 30.07.2007 and, in case of failure to do so, he shall surrender to jail. Rule is discharged with no order as to cost. Direct service is permitted.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)